



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 10  
1200 Sixth Avenue  
Seattle, Washington 98101

*from*  
**FILE COPY**

Reply to the  
Attention of M/S SO-155

**JUN 15 1993**

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

W.E. Stevenson, Registered Agent for  
S. D. S. Lumber Co.  
P.O. Box 266  
Bingen, Washington 98605

Re: S. D. S. Lumber Co.  
Toxic Substances Control Act  
Docket No. 1093-05-25-2615

Dear Mr. Stevenson:

Enclosed is an administrative complaint for the assessment of civil penalties that has been filed against S. D. S. Lumber Co. (hereinafter "Respondent") by the Environmental Protection Agency (EPA). A copy of the penalty policy and the Consolidated Rules of Practice that apply to this complaint are also enclosed.

The complaint alleges that Respondent violated the disposal, recordkeeping, and notification provisions of the PCB (polychlorinated biphenyl) Regulations issued under the Toxic Substances Control Act (TSCA). As explained in the complaint, unless Respondent requests and receives a written extension of time, it has 20 days to do one of the following:

1. arrange a settlement conference and request and receive a written extension of time;
2. file a written answer and request a hearing with an administrative law judge;  
or
3. pay the proposed penalty.

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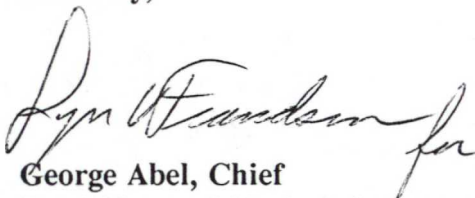


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The specific procedures for each of the three options are explained in the complaint. Also, as explained in the complaint, if Respondent fails to take one of the actions outlined above, a default order could be entered against it. After entry of an order of default, penalties can be assessed without further notice.

However, we are available to discuss with Respondent the alleged violations and proposed penalties. Such discussions may result in settlement which would make the filing of a written answer unnecessary. Joseph W. Ryan, Assistant Regional Counsel, is the attorney handling this complaint for EPA. If Respondent wants to arrange for a settlement conference, request a time extension, or has any questions, Mr. Ryan may be reached at (206) 553-1506.

Sincerely,

A handwritten signature in cursive script, appearing to read "George Abel", followed by the word "for" in a smaller, less distinct script.

George Abel, Chief  
Pesticides and Toxic Substances Branch

cc: Rebecca Torchia, EPA Headquarters

Enclosures

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10 **UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

11 **In the Matter of:**

12 **S. D. S. LUMBER CO.,**  
13 **Bingen, Washington,**

14 **Respondent.**

) **DOCKET NO. 1093-05-25-2615**

) **COMPLAINT**

15  
16 **I.**

17  
18 **JURISDICTION**

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20 **1. This is an administrative action instituted pursuant to Section 16(a) of**  
21 **the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), for the assessment of a**  
22 **civil penalty. The Complainant is Region 10, United States Environmental Protection**  
23 **Agency (EPA), which has been delegated the authority to institute this action.**



1 II.

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3 APPLICABLE STATUTES AND REGULATIONS

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5 2. Complainant alleges that the above-named Respondent violated Section  
6 15 of TSCA, 15 U.S.C. § 2614, by violating the regulations at 40 C.F.R. Part 761, which  
7 were promulgated pursuant to Section 6 of TSCA, 15 U.S.C. § 2605, and pertain to the  
8 use and disposal of polychlorinated biphenyls ("PCBs"). The applicable regulations and  
9 the nature of the violations are described in more detail below.

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11  
12 III.

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14 FINDINGS AND VIOLATIONS

15  
16 3. On August 6, 1992, an EPA inspection was performed at S. D. S. Lumber  
17 Co., Bingen, Washington. The purpose of the inspection was to determine compliance  
18 with TSCA, 15 U.S.C. § 2601 et seq., and specifically the PCB regulations promulgated  
19 at 40 C.F.R. Part 761. Violations were documented as a result of the inspection; these  
20 violations and applicable regulations and requirements are set forth below.

21  
22 4. 40 C.F.R. § 761.3 defines PCB Transformer as any transformer that  
23 contains 500 ppm PCB or greater.

1           5. During calendar year 1988, Respondent was an owner or operator of a  
2 facility using or storing at any one time one or more PCB Transformers.

3  
4           6. During calendar year 1989, Respondent was an owner or operator of a  
5 facility using or storing at any one time one or more PCB Transformers.

6  
7           7. During calendar year 1990, Respondent was an owner or operator of a  
8 facility using or storing at any one time one or more PCB Transformers.

9  
10          8. During calendar year 1991, Respondent was an owner or operator of a  
11 facility using or storing at any one time one or more PCB Transformers.

12  
13          9. Respondent manifested PCB waste on Uniform Hazardous Waste Manifest  
14 number 19358.

15  
16          10. PCB waste identified on Uniform Hazardous Waste Manifest Number 19358  
17 was stored for disposal at Respondent's facility for longer than thirty days.

18  
19          11. PCB waste identified on Uniform Hazardous Waste Manifest Number 19358  
20 was removed from service on April 1, 1992, and on July 6, 1992.

21  
22          12. PCB waste identified on Uniform Hazardous Waste Manifest Number 19358  
23 was transported for disposal from Respondent's facility on September 18, 1992.

1           13. Respondent did not file EPA Form Number 7710-53 with EPA identifying  
2 Respondent as a generator with on-site PCB storage facility.

3  
4           14. PCB waste identified on Uniform Hazardous Waste Manifest Number 19358  
5 was regulated for disposal pursuant to 40 C.F.R. § 761.60.

6  
7           15. 40 C.F.R. § 761.3 defines "EPA identification number" as the 12-digit  
8 number assigned to a facility by EPA upon notification of PCB waste activity under  
9 40 C.F.R. § 761.205.

10  
11           16. REGULATION - DISPOSAL: 40 C.F.R. § 761.60(d) provides that spills  
12 and other uncontrolled discharges of PCBs at concentrations of 50 ppm or greater  
13 constitute the disposal of PCBs. PCBs resulting from the cleanup and removal of spills,  
14 leaks, or other uncontrolled discharges, must be stored and disposed of in accordance  
15 with 40 C.F.R. § 761.60(a). Disposal of PCBs in any other manner constitutes the  
16 improper disposal of PCBs.

17  
18           17. VIOLATION ONE: During the inspection, a PCB Transformer, GE  
19 Pyranol, serial number H884840, was leaking PCBs. This leaking constituted the  
20 improper disposal of PCBs.

21  
22           18. VIOLATION TWO: During the inspection, a PCB Transformer, GE  
23 Pyranol, serial number H884841, was leaking PCBs. This leaking constituted the  
24 improper disposal of PCBs.



1           **19. REGULATION - RECORDS & MONITORING: 40 C.F.R. § 761.180(a)**  
2           **(1978) provides that, beginning July 2, 1978, each owner or operator of a facility using**  
3           **or storing at one time at least 45 kilograms (99.4 pounds) of PCBs contained in PCB**  
4           **Container(s), or one or more PCB Transformers, or 50 or more PCB Large High or Low**  
5           **Voltage Capacitors, shall develop and maintain records on the disposition of the PCBs**  
6           **and PCB Items. The records shall form the basis of an annual document prepared for**  
7           **each facility by July 1, covering the previous calendar year.**  
8

9           **20. VIOLATION THREE: Respondent did not prepare a PCB Annual**  
10          **Document complying with 40 C.F.R. § 761.180(a) for the calendar year 1988.**  
11

12          **21. VIOLATION FOUR: Respondent did not prepare a PCB Annual**  
13          **Document complying with 40 C.F.R. § 761.180(a) for the calendar year 1989.**  
14

15          **22. REGULATION - ANNUAL DOCUMENT LOGS: 40 C.F.R. § 761.180(a)**  
16          **(1990) states, in part, that beginning February 5, 1990, each owner or operator of a**  
17          **facility, other than a commercial storer or a disposer of PCB waste, using or storing 45**  
18          **kilograms (99.4 pounds) of PCBs contained in PCB Container(s), or one or more PCB**  
19          **Transformers, or 50 or more PCB Large High or Low Voltage Capacitors shall develop**  
20          **and maintain at the facility, or a central facility provided they are maintained at that**  
21          **facility, all annual records and the written annual document log of the disposition of**  
22          **PCBs and PCB Items.**  
23  
24  
25  
26

1           **23. VIOLATION FIVE:** Respondent did not prepare a PCB Annual Document  
2 Log complying with 40 C.F.R. § 761.180(a) for the calendar year 1990.

3  
4           **24. VIOLATION SIX:** Respondent did not prepare a PCB Annual Document  
5 Log complying with 40 C.F.R. § 761.180(a) for the calendar year 1991.

6  
7           **25. REGULATION - NOTIFICATION:** 40 C.F.R. § 761.202(b)(1)(i) states that  
8 after June 4, 1990, a generator of PCB waste shall not process, store, dispose of,  
9 transport, or offer for transportation PCB waste without having received an EPA  
10 identification number from the Agency. A generator of PCB waste who is exempted from  
11 notification under 40 C.F.R. § 761.205(c)(1) or who notifies EPA in a timely manner  
12 under 40 C.F.R. § 761.205(c)(2)(i), but has not yet received a unique identification  
13 number, shall be regarded as having received from EPA the identification number  
14 "40 CFR PART 761."

15  
16           **26. VIOLATION SEVEN:** The facility stored PCB waste identified on  
17 Uniform Hazardous Waste Manifest Number 19358, without having received an EPA  
18 identification number from EPA.



IV.

**PROPOSED CIVIL PENALTY**

27. Section 16 of TSCA, 15 U.S.C. § 2615, authorizes a civil penalty of up to \$25,000.00 per day for each violation of TSCA. Based upon the violations cited in this Complaint, the nature, circumstances, extent, and gravity of the violations alleged, Respondent's ability to pay, effect on the Respondent's ability to continue to do business, Respondent's lack of history of prior such violations, the degree of Respondent's culpability, and other such matters as justice requires, the Complainant proposes that Respondent be assessed the following penalty calculated in accordance with the PCB Penalty Policy. A copy of the PCB Penalty Policy accompanies this Complaint.

28. The nature, circumstances, and gravity of Respondent's failure to properly dispose of PCBs, as cited in Violations One and Two, are represented by Level One on the matrix in the Penalty Policy. The nature, circumstances, and gravity of Respondent's failure to prepare PCB Annual Documents and PCB Annual Document Logs, as cited in Violations Three through Six, are represented by Level Four on the matrix. The nature, circumstances, and gravity of Respondent's storage of PCB waste without first receiving an EPA identification number, as cited in Violation Seven, are represented by Level One on the matrix in the Penalty Policy. The extent of Violations One and Two is represented by "minor" on the matrix. The extent of Violations Three through Seven is represented by "significant" on the matrix.

29. The proposed penalty reflects a presumption of Respondent's ability to pay the penalty and to continue in business. Respondent may submit appropriate documentation to rebut that presumption during settlement negotiations. Taking into account all the above factors, the penalty for Respondent, S. D. S. Lumber Company, as prescribed by the matrix, is \$51,000, calculated as set forth below.

<u>Regulation</u>	<u>Requirement</u>	<u>Penalty Amount</u>
1. 40 C.F.R. § 761.60	Disposal	\$ 5,000
2. 40 C.F.R. § 761.60	Disposal	\$ 5,000
3. 40 C.F.R. § 761.180(a)	Recordkeeping	\$ 6,000
4. 40 C.F.R. § 761.180(a)	Recordkeeping	\$ 6,000
5. 40 C.F.R. § 761.180(a)	Recordkeeping	\$ 6,000
6. 40 C.F.R. § 761.180(a)	Recordkeeping	\$ 6,000
7. 40 C.F.R. § 761.202(b)	Prohibitions (notification)	<u>\$17,000</u>
TOTAL		\$51,000

30. Based on the degree of culpability of Respondent, and on other matters as justice requires, no further adjustment of the penalty is indicated at this time. If appropriate, further penalty adjustments may be made during settlement negotiations.



**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

31. The Consolidated Rules of Practice, 40 C.F.R. Part 22, govern these proceedings. A copy of the Consolidated Rules of Practice accompanies this Complaint. Under those rules, Respondent has the right to request a formal hearing to contest any material fact set forth in this Complaint or to contest the appropriateness of the proposed penalty.

32. To avoid being found in default, which constitutes an admission of all material facts alleged in the Complaint and a waiver of the right to a hearing, and which will effect the assessment of the above civil penalty without further proceedings, Respondent must file with the Regional Hearing Clerk a written Answer within twenty (20) days after receiving this Complaint. Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint with regard to which Respondent has any knowledge. Where Respondent has no knowledge of a particular fact and so states, the allegation is deemed denied. Failure to deny any material factual allegation constitutes an admission of the allegation. The Answer shall also state: (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which Respondent intends to place at issue; and (3) whether a hearing is requested. A hearing is deemed requested should Respondent contest any material fact upon which the Complaint is based or raise any affirmative defense, or contend that the amount of the penalty proposed in the Complaint is



1 inappropriate, or claim that Respondent is entitled to judgment as a matter of law. The

2 Answer must be sent to:

3  
4 Regional Hearing Clerk, Region 10  
U.S. Environmental Protection Agency  
1200 Sixth Avenue, SO-155  
5 Seattle, Washington 98101

6  
7 33. A copy of the Answer and all other documents which Respondent files in  
8 this action must be furnished to Joseph W. Ryan, Assistant Regional Counsel, the  
9 attorney assigned to represent EPA in this matter, at:

10 Office of Regional Counsel, Region 10  
U.S. Environmental Protection Agency  
11 1200 Sixth Avenue, SO-155  
12 Seattle, Washington 98101

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14 VI.

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16 INFORMAL SETTLEMENT CONFERENCE

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18 34. Whether or not a hearing is requested, Respondent may contact the  
19 above-named attorney to arrange for an informal settlement conference to discuss the  
20 facts of this case, the amount of the proposed penalty, or the possibility of settlement.  
21 An informal settlement conference does not, however, affect Respondent's obligation to  
22 file a timely written Answer to the Complaint.

23  
24 35. EPA has the authority to modify the amount of the proposed penalty,  
25 where appropriate, to reflect any settlement reached with Respondent in an informal  
26

1 conference. The terms of such an agreement would be embodied in a Consent  
2 Agreement and Consent Order. A Consent Agreement and Consent Order entered into  
3 by and between EPA and Respondent would be binding as to all terms and conditions  
4 specified therein upon signature by the EPA Regional Administrator.  
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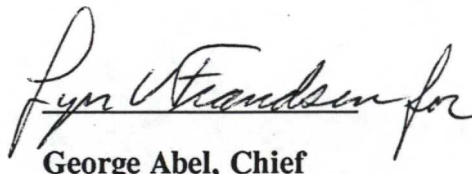
6 36. Respondent is advised that, after the Complaint is issued, the  
7 Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the  
8 merits of these or any other factually related proceedings with the EPA Regional  
9 Administrator, Administrative Law Judge, any member of the Environmental Appeals  
10 Board, or any person likely to advise these officials in the decision of this case.  
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VII.

**PAYMENT OF PENALTY**

37. Instead of requesting an informal settlement conference or filing an Answer requesting a hearing, Respondent may choose to pay the proposed penalty. In order to do this, Respondent must first establish contact with the EPA attorney named in Section V of this Complaint to arrange for the preparation of a Consent Agreement and Consent Order.

ISSUED AT SEATTLE this 15<sup>th</sup> day of June, 1993.



George Abel, Chief

Pesticides and Toxic Substances Branch



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7 **CERTIFICATE OF SERVICE**  
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9 I hereby certify that, on the date hereunder stated, I filed by personal delivery, with the  
10 EPA Region 10 Hearing Clerk, the original of the foregoing Complaint, Docket Number No.  
11 TSCA 1093-05-25-2615, and that, on the same date, I served a true and correct copy thereof,  
12 with accompanying copies of the Consolidated Rules of Practice, as amended by the Changes  
13 to Regulations (40 CFR Part 1 et al.), and the Polychlorinated Biphenyls (PCB) Penalty  
14 Policy, by Certified Mail, Return Receipt Requested, on:  
15  
16  
17

18 Mr. W.E. Stevenson  
19 Registered Agent for  
20 S.D.S. Lumber Co.  
21 P.O. Box 266  
22 Bingen, Washington  
23  
24

25 **JUN 15 1993**

26 \_\_\_\_\_  
Date

27   
28 ROMULO V. CORSILLES  
Toxic Substances Section  
PTSB, EPA Region 10